IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11285 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

KALUMIYA RAJABHAI MALEK

Appearance:

MR HARDIK C RAWAL for Petitioner No. 1

MR SHAKEEL A QURESHI for Respondent No. 1

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 24/01/2002

ORAL JUDGEMENT

Rule. Mr.Shakeel Qureshi, learned advocate waives service of rule. With consent of the parties the matter is taken up for final disposal. The petition filed by Gujarat State Road Transport Corporation

(hereinafter referred to as "the Corporation"), whereby the award passed by the Labour Court, Nadiad in Reference (LCN) No.215 of 1998 dated 11.4.2001 is challenged. By the impugned judgement and award the learned Judge of the Labour Court has quashed and set aside the order dated 10.7.1998 dismissing the respondent workman- Driver and had ordered to reinstate the workman on his original post with 100% back wages.

2. The case of the petitioner corporation is that the respondent workman was absent from 24.4.1998 to 29.4.1998 without prior intimation or permission from the authorities. He was served with charge sheet and departmental inquiry was initiated. An order of dismissal came to be passed on 10.7.1998. It is the case of the petitioner corporation that during the inquiry till passing of the order of dismissal, the respondent workman never cared to report for duty or to attend departmental proceedings. This order of dismissal was under challenge in the aforesaid proceedings and the learned Judge, after taking into consideration the case of both the sides, taking a view that the respondent workman was having some trouble with his eyes, therefore, he had made an application for recategorisation on 3.7.1998, a copy of which is produced at page 30 along with the affidavit in reply. It is true that the said application is made just a week prior to passing of order of dismissal. But taking into consideration the fact that the respondent workman was having long service, he was having some difficulty while driving at night time, he was under treatment with Dr.Lukmani and after hearing both the sides, it will be in fitness of things if the judgement and award of the Labour Court is modified. The award to reinstate the workman on his original post of Driver with full back wages is quashed and set aside. Taking a sympathetic view of the matter and taking into consideration that the respondent workman had a genuine reason of eye sight on account of which he could not discharge his duty, it is thought fit that it will be in the interest of justice if the respondent workman is ordered to be reinstated giving benefit of recategorisation either on the post of Helper or Peon as per the availability of the post with the petitioner corporation. Taking into consideration the principle of 'no work, no wage', the respondent workman is not awarded any wages for the intervening period. However, his services are ordered to be treated as continuous and the petitioner corporation shall see that this benefit of recategorisation is given to him at the earliest but not later than six weeks from the date of receipt of copy of this order.

3. The petition is disposed of with the aforesaid directions. Rule is made absolute to the aforesaid extent. No order as to costs. Direct service is permitted.

(Rave R. Tripathi, J.)

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